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09/995,358	11/26/2001	Jules Zecchino	2870/566	2755
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/995,358

Filing Date: November 26, 2001

Appellant(s): ZECCHINO ET AL.

Mekalaradha Masilamani
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/28/2005.

KS

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on 07/30/2004 has not been entered.

(5) *Summary of Invention*

The summary of invention contained in the brief is deficient because the statement that "the cited references fail to teach or suggest the claimed biliquid foam composition containing the claimed gallant" is not part of the invention.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-21 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *ClaimsAppealed*

A substantially correct copy of appealed claims 1-21 appears on page 15 of the Appendix to the appellant's brief. The minor errors are as follows: The amendment after final that was not entered amended claims 1, 12 and 19 by deleting "about" before "7". Thus claims 1, 12 and 19 should have ---about--- before the "7".

(9) *Prior Art of Record*

97/32559 WHEELER 09-1997

Clariant Product Brochure 01-1999

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-21 rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 07/21/2003 and 01/30/2004.

(11) Response to Argument

Appellant cited case laws but failed to show how the case laws are particularly directed to the claims at issue.

The polymeric sulfonic gallant disclosed in the Clariant product brochure is a known gelling agent for aqueous systems and thickening agent for oil-in-water emulsions. Thus, contrary to applicants' assertion that there is no suggestion in either reference to substitute polymeric sulfonic acid for carbomer as a gallant, the polymeric sulfonic acid is art recognized gelling agent for aqueous systems and thickening agent for oil-in-water emulsions so that using the polymeric sulfonic acid disclosed in the Clariant product brochure in the biliquid foam of Wheeler as a substitute for the carbomer would be expected to successfully gel or thicken the

composition of Wheeler in light of the art recognized properties of the polymeric sulfonic acid.

Applicants' specification at paragraph [0008] of the published application recognizes WO 97/32559 as disclosing bi-liquid foams and the WO 97/32559 specifically discloses bi-liquid foams (see the abstract, for example) and applicants' declarations assigning Wheeler as disclosing compositions outside the definition of a biliquid foam appear to give definitions that go against teachings of the prior art and also goes against applicants admission that the WO 97/32559 discloses biliiquid foams. The declaration does not provide scientific data disproving the art recognized biliiquid foam of Wheeler. Although, applicants state that Wheeler's example 3 (page 9) discloses large amount of surfactant in excess of 50%, it is noted that example 3 starts with 33% and 30% surfactant so that the resultant percent amount of surfactant cannot be greater than 50%, and this is supported by 4th paragraph of the WO 97/32559 where it states "surfactant to stabilize the formulation may comprise between 0.05 and 0.5%, and preferably between 0.05 and 0.3%, which is less than 1%. This clearly shows that the percent surfactant is desired to be less than 1%.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

BF
June 3, 2005

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